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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/779,318
Filing Date: February 13, 2004
Appellant(s): AKSU ET AL.

Kenneth Q. Lao
Reg. No. 40,061
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 18, 2007appealing from the Office action mailed January 16, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1). 6,175,856 Riddle 1-2001

2). Applicant's Admitted Prior Art - Specification pages 1-2.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,175,856 issued to Riddle in view of Applicant's Admitted Prior Art (hereinafter referred to as AAPA).

Regarding claim 1, Riddle teaches a method for signaling and negotiation between a client and a server in a multimedia streaming service, wherein a plurality of adaptation mechanisms or capabilities for use in the service for data delivery are supported by the client, each adaptation mechanism or capability having an attribute, said method comprising:

the client providing information indicative of the attributes defining the adaptation mechanisms or capabilities that are supported by the client [abstract; figure 6];

the server selecting one or more of the attributes based on the provided information [abstract; figure 6]; and

the server providing further information to the client indicative of the selected attributes so as to allow the client to know the one or more adaptation mechanisms or capabilities defined by the one or more attributes selected by the server [figure 6].

However, Riddle does not explicitly teach the adaptation mechanisms or capabilities are regarding a data delivery process. AAPA teaches this deficiency in the specification, page 1, lines 19-34. At the time the invention was made, one of ordinary skill in the art would have been motivated to provide adaptation mechanisms or capabilities regarding a data delivery process in order to cause changes of behavior in the network characteristics, therefore allowing successful service (see specification, page 1, lines 31-34).

Regarding claim 2, Riddle teaches the method of claim 1, wherein the client is configured to provide the information via a capability exchange mechanism [figure 1].

Regarding claim 3, Riddle teaches the method of claim 1, wherein the client is configured to provide the information via a multimedia streaming control protocol [abstract; figure 1].

Regarding claim 4, Riddle teaches the method of claim 1, further comprising the server providing indication of a capability to the client prior to the client providing information [abstract].

Regarding claim 5, Riddle teaches a method for signaling and negotiation between two parties including a client and a server in a multimedia streaming service, wherein a plurality of

adaptation mechanisms or capabilities for use in the server for data delivery are supported by the client, each adaptation mechanism or capability having an attribute, said method comprising:

providing by one of the two parties to the other of the two parties information indicative of one or more adaptation mechanisms or capabilities; and conveying a message from said other party to said party, in response to the information, acknowledging supporting of said one or more adaptation mechanisms or capabilities [abstract; figure 6].

However, Riddle does not explicitly teach the adaptation mechanisms or capabilities are regarding a data delivery process. AAPA teaches this deficiency in the specification, page 1, lines 19-34. At the time the invention was made, one of ordinary skill in the art would have been motivated to provide adaptation mechanisms or capabilities regarding a data delivery process in order to cause changes of behavior in the network characteristics, therefore allowing successful service (see specification, page 1, lines 31-34).

Regarding claim 6, Riddle teaches the method of claim 5, wherein said one party is the server and the other party is the client, and wherein the client acknowledges support by using the attributes defining said one or more adaptation mechanisms or capabilities in the responding message [figure 9].

Regarding claim 7, Riddle teaches the method of claim 5, wherein said one party is the client and the other party is the server, and wherein the client is configured to provide a

plurality of attributes; and the server is configured to select one or more of the provided attributes based on the provided information for acknowledging the support [abstract; figure 6].

Claims 8-10 and 11-13 are similar to claims 1-3, therefore are rejected under the same rationale.

(10) Response to Argument

Appellant's arguments have been considered but are not found persuasive.

In view of Supreme Court Decision in KRS International Co. v. Teleflex Inc., 550 U.S. -, 82 USPQ2d 11385 (2007), the Supreme Court stated that the Federal Circuit erred when it applied the well-known teaching-suggestion-motivation (TSM) test in an overly rigid and formalistic way. According to the Supreme Court, the TSM test is one of a number of valid rationales that could be used to determine obviousness. It is ***not*** the only rationale that may be relied upon to support a conclusion of obviousness.

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, in this case, Riddle teaches signaling and negotiation between a client and a server in a multimedia streaming service (Riddle, i.e. Abstract and figure 6), while AAPA

teaches the adaptation of the data delivery process (specification, page 1, lines 31-34). At the time the invention was made, one of ordinary skill in the art would have been motivated to provide adaptation mechanisms or capabilities regarding a data delivery process in order to cause changes of behavior in the network characteristics, therefore allowing successful service (see specification, page 1, lines 31-34). This assertion is derived directly from Applicant's own disclosure.

In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

ANB

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